

**STATEMENT OF
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FEDEX GROUND PACKAGE SYSTEM, INC.
BEFORE THE
THE MICHIGAN LEGISLATURE
SENATE COMMITTEE ON ECONOMIC DEVELOPMENT
S.B. 1012
May 2, 2012**

Good afternoon Mr. Chairman and members of the Committee, my name is Gary D. Dunbar. I am an attorney with FedEx Ground Package System, Inc., based in Pittsburgh, Pennsylvania.

On behalf of FedEx Ground, I want to thank the Committee for the opportunity to appear here today.

FEDEX GROUND PRESENCE IN MICHIGAN

If I may, let me take just a moment to provide you with some information regarding FedEx Ground's presence in Michigan. FedEx Ground has been an employer in Michigan since 1985 when the company commenced its operations. FedEx Ground currently operates 13 facilities in the state that employ 1,124 Michiganders in various operations positions. We are, of course, proud of these employees. They work hard every day to serve our customers, and FedEx Ground is committed to paying all taxes and fees related to their work, as required by state law.

FedEx Ground is also proud of the 270 independent contractors -- and their 1,226 employees -- who support our network by providing pickup and delivery services in Michigan. All 270 have voluntarily entered into an independent contractor relationship by signing an operating agreement that spells out the pick-up and delivery activities and service expectations to be performed in support of our network. Included in the agreement, importantly, is a requirement that each independent contractor comply with all federal, state and local laws, regulations and ordinances. In fact, failure to comply with this provision is a breach of contract and basis for contract termination. And FedEx has terminated contracts for such breaches.

THE CONTRACTORS UNDER AGREEMENT TO FEDEX GROUND ARE SMALL BUSINESSES

The FedEx Ground independent contractors are small business entities, plain and simple. All are incorporated, all are registered with the state as businesses, all treat the persons they use to provide services to FedEx Ground as employees, all have workers' compensation coverage on their employees, and all report to the state for unemployment insurance purposes.

They use their own initiative and skills to manage and operate their businesses. They have a transferable interest in the work areas they service. They own the equipment that they use to service their work areas. And they, not FedEx Ground, choose, hire and supervise the employees that drive the equipment they lease to FedEx Ground.

The small businesses under agreement to FedEx Ground are not paid by the hour. They earn in proportion to how well they satisfy customers and how well they produce the results they have contracted to provide. In Michigan, in 2011, these small businesses earned up to \$1.9 million and averaged nearly \$290,000 in revenue per entity.

FedEx Ground has worked with independent contractors for more than a quarter century. The company made the decision to utilize independent contractors back in 1985, because it believed they would help deliver reliable, cost-effective service in a market that was about to become intensely competitive. And that has proven to be the case. As small business entities with a personal stake in FedEx Ground's success, they showed flexibility, drive and efficiency not often found in a traditional driver workforce. These factors were integral to successfully launching this company against a much larger competitor, and they remain competitive differentiators today.

SMALL BUSINESSES ARE ESPECIALLY IMPORTANT TO MICHIGAN

Independent contracting is a well-established industry practice. These small businesses have been, and continue to be, the norm in the trucking industry. And, in today's economy, more and more people are turning to small businesses for their employment. In Michigan, for example, the people employed by the contractors under agreement to FedEx Ground out number the contractors that

employ them by more than 4 to 1. It is difficult to imagine any state, Michigan in particular, not wanting to encourage this very favorable development. FedEx Ground believes that the proposed legislation will do just that.

S.B. 1012 PROVIDES MUCH NEEDED CERTAINTY

FedEx Ground supports the proposed legislation because it will bring a measure of clarity to an area much in need of it. The proposed legislation is patterned after the *Trucking & Courier Industries Workers' Compensation Model Act*, a model act adopted by the National Commission of Insurance Legislators (NCOIL) to remedy uncertainty over who should be covered by workers' compensation in the trucking and courier industries. The proposed legislation would accomplish this by very plainly stating rules for determining who is and is not an independent contractor. It would establish a six-factor statutory test related to equipment ownership, operating and cost responsibilities, compensation structure, control over work performed, and certification of independent contractor status. Under the proposed legislation, individuals who fail to meet the six standards would be considered to be employees, unless, of course, they meet some other exempting criterion in Michigan law.

Thank you again for the opportunity to appear before the Committee.